

REMARKS

Applicants reply to the final Office Action dated January 6, 2010 within two months. Claims 1-25 are pending in the application and the Examiner rejects claims 1-25. Support for the amendments may be found in the originally-filed specification. No new matter is entered with these amendments. Applicants respectfully request reconsideration of this application.

Rejections under 35 U.S.C § 101

The Examiner rejects claims 1-25 under 35 U.S.C § 101 as being directed to nonstatutory subject matter. Applicants respectfully disagree with these rejections, but Applicants present claim amendments in order to clarify the patentable aspects of the claims and to expedite prosecution. Specifically, language such as "an automated programmed electronic computer system... and by the computer system" as recommended by the Examiner on page 3 of the Office Action has been incorporated. Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 1-25.

Applicants respectfully request the Examiner withdraw the designation of Applicant Admitted Art (as listed on page 5 of the Office Action). In Applicants previous Reply to the Office Action dated June 25, 2009, Applicants provided the following reasoned statements explaining why the Applicants believe the Office has erred substantively to the factual findings:

The Examiner asserts that the feature of "the transaction variables including a passenger name on the travel ticket, a travel date, a routing description of the travel ticket, and an electronic ticket indicator" are disclosed by Official Notice (or the "practitioner's own knowledge"). The Examiner also mentions *Lawrence* with respect to this feature. Applicants disagree that the Official Notice is proper, and disagree that *Lawrence* discloses the above mentioned distinguishing feature.

First, Applicants note that the Official Notice is not proper. (1) Simply because travel tickets may have been purchased that included a passenger name, travel date, route, and/or electronic ticket indicator, there is no assertion by the Examiner that such items were ever used as part of a real-time fraud-risk evaluation. Accordingly, such an assertion by the Examiner is not unquestionably well known such that it would meet the requirements of Official Notice. (2) Indeed, as noted in the background section of Applicants' specification, real-time authorization data at the time of Applicants' invention did not include such information. (3) Further, Applicants respectfully request that if the Examiner maintains the asserted Official Notice (or the "practitioner's own knowledge") in

any further official action, that the Examiner provide a reference evidencing that such features were known to those skilled in the art *at the time the invention was made*. As stated in the M.P.E.P., "[i]t is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based." *See In re Zurko*, 258 F.3d 1379, 1385 (Fed. Cir. 2001), *M.P.E.P. § 2144.03(A)*. "It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." *M.P.E.P. § 2144.03(A)*. Accordingly, Applicants contend that the record fails to establish that the asserted Official Notice is capable of the required instant and unquestionable demonstration of being well-known at the time the invention was made. Absent the required support for the asserted Official Notice (or the "practitioner's own knowledge"), Applicants respectfully contend that the obviousness rejection lacks the required foundation and therefore requests withdrawal of that rejection.

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Finally, even assuming *arguendo* that the legal and factual requirements for Official Notice are met (which Applicants do not concede, as noted above) and that *Lawrence* brings something relevant to the table (which again Applicants do not concede, as noted above), (4) the asserted *Basch-Lawrence-Official Notice* is an improper combination since the Examiner does not provide proper reasoning for such an alleged combination. For example, the Examiner provides only a conclusory statement that a reason for combining *Basch*, *Lawrence* and the *Official Notice* is the "desire to provide methods and systems which will utilize information to assist with risk management and due diligence related to travel arrangements (*Lawrence*, page 1, [0006])." *Office Action*, p. 7.

(5) Applicants contend the Examiner's conclusory statement (i.e., assist risk management and due diligence) is improper since it is far too general and could cover almost any modification contemplated of *Basch*. (6) Were such reasons permitted, almost every invention, no matter how unobvious, would be denied patentability since risk management and due diligence are goals for almost every business transaction. (7) Completely missing from the Examiner's assertions are reasons as to why the specific modification of the *Basch* approach, namely to use "transaction variables including a passenger name on the travel ticket, a travel date, a routing description of the travel ticket, and an electronic ticket indicator" is disclosed or suggested in the applied references. (8) In fact, there is nothing in any of the references that suggests these "transaction variables," as required to assert a valid combination of references.

Accordingly, absent a proper reason to support the asserted *Basch-Lawrence-Official Notice* combination, the combination is improper and claim 1 is therefore not rendered obvious. Thus, Applicants respectfully request reconsideration and that the rejection be withdrawn.

Dependent claims 2-15 and 17-23 are patentable for at least the same reasons as independent claims 1 and 16 from which it directly or indirectly depends, and further in view of its own respective features. Accordingly, Applicants respectfully request that the rejection of claims 2-15 and 17-23 are withdrawn.

The reasoned statements above can hardly be equated with “a mere statement or argument the Office has not established a *prima facie* case of obviousness or that the Office’s reliance on common knowledge is unsupported by documentary evidence.” As such, Applicants traverse the allegation of Applicant admitted art with respect to claims 1-15 and 17-23.

Moreover, Applicants renew their traverse of the official notice taken by the Examiner in the Office Action dated June 25, 2009 because “the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.” MPEP 2144.03. **If the Examiner still maintains the previous 103 rejections, Applicants therefore respectfully request that the Examiner remove the finality of this Office action and “provide documentary evidence in any future Office action if the rejection is to be maintained.”** (emphasis added) *Id.*

Moreover, “the examiner bears the initial burden of **factually supporting** any *prima facie* conclusion of obviousness.” (emphasis added) MPEP 2142. “With regard to rejections under 35 U.S.C. 103, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a *prima facie* case of obviousness) is more probable than not.” *Id.* Applicants assert that the Examiner has not provided sufficient evidence to provide a *prima facie* case of obviousness. Specifically, Applicants note that the Examiner has not address many of the Applicant’s arguments specifically, “simply because travel tickets may have been purchased that included a passenger name, travel date, route, and/or electronic ticket indicator, there is no assertion by the Examiner that such items were used as transaction variables as part of a real-time fraud-risk evaluation.”

Rejections under 35 U.S.C § 103

The Examiner rejects claims 1-25 under 35 U.S.C. § 103(a), as being unpatentable over Basch et al., US Patent No. 6,658,393, (“Basch”), in view of Lawrence, U.S. Publication No. 2003/0225687 (“Lawrence”) and AAPA. Applicants respectfully disagree with these rejections, but Applicants present claim amendments in order to clarify the patentable aspects of the claims and to expedite prosecution.

Basch generally teaches a “method for predicting financial risk,” (abstract). The Examiner, at page 8 of the Office Action, alleges claim 39 of Basch, (“39. A computer-implemented method as recited in claim 32 further including: transmitting said score to a transaction authorization system, wherein when said score is determined to be below the predefined financial risk, the transaction authorization system is arranged to deny an authorization request,”) discloses “transmitting, by the computer system, an authorization decision to the merchant to approve or refer the transaction for further identification based upon the output of the fraud risk model,” as recited by independent claim 1 (emphasis added, as amended) and similarly recited by independent claims 16, 24 and 25. However, claim 39 discloses denying requests. Basch is silent as to approv(ing) or referr(ing) the transaction for further identification based upon the output of the fraud risk model. Moreover, Lawrence is also silent as to “approv(ing) or referr(ing) the transaction for further identification based upon the output of the fraud risk model,” as recited by independent claim 1 (emphasis added, as amended) and similarly recited by independent claims 16, 24 and 25. As such, the combination of or individual cited references do not disclose or contemplate “transmitting, by the computer system, an authorization decision to the merchant to approve or refer the transaction for further identification based upon the output of the fraud risk model,” as recited by independent claim 1 (as amended) and similarly recited by independent claims 16, 24 and 25.” Accordingly, Applicants respectfully request that the rejection be reconsidered and withdrawn.

The Examiner asserts that the feature of “the transaction variables including a passenger name on the travel ticket, a travel date, a routing description of the travel ticket, and an electronic ticket indicator” are disclosed by Official Notice (or the “practitioner's own knowledge”). The Examiner also mentions Lawrence with respect to this feature. Applicants disagree that the Official Notice is proper, and disagree that Lawrence discloses the above mentioned distinguishing feature.

Lawrence does not disclose the “transaction variables including a passenger name on the travel ticket, a travel date, a routing description of the travel ticket, and an electronic ticket indicator,” as recited in claim 1, and similarly recited in independent claims 16, 24 and 25. Because Lawrence is focused on reputational, regulatory, physical and financial (fines, forfeitures, lost revenue) risks of a particular travel arrangement, Lawrence's disclosure of input data is limited to a description of a travel mechanism (including details such as type of plane,

number of passengers, how cargo is stored, safety records) as well as personal data of one or more travelers (name, date of birth, citizenship, passport number, etc). See Lawrence, paras. [0008], [0040], [0069], [0070]. As discussed above, absent the disclosure or contemplation by Lawrence of the "transaction variables including a passenger name on the travel ticket, a travel date, a routing description of the travel ticket, and an electronic ticket indicator," claims 1, 16, 24 and 25 cannot be rendered obvious. Accordingly, on this basis alone, Applicants respectfully request that the rejection be reconsidered and withdrawn.

Dependent claims 2-15, and 17-23 variously depend from independent claims 1 and 16. Therefore, Applicants assert that dependent claims 2-15, and 17-23 are patentable for at least the same reasons stated above for differentiating independent claims 1, 16, 24 and 25, as well as in view of their own respective features. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of dependent claims 2-15, and 17-23.

When a phrase similar to "at least one of A, B, or C" or "at least one of A, B, and C" is used in the claims, Applicants intend the phrase to mean any of the following: (1) at least one of A; (2) at least one of B; (3) at least one of C; (4) at least one of A and at least one of B; (5) at least one of B and at least one of C; (6) at least one of A and at least one of C; or (7) at least one of A, at least one of B, and at least one of C.

Applicants respectfully submit that the pending claims are in condition for allowance. The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. **19-2814**. Applicants invite the Examiner to telephone the undersigned, if the Examiner has any questions regarding this Reply or the present application in general.

Respectfully submitted,

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By: 

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